



Ohio Legislative Service Commission

Brian Hoffmeister

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 2 of the 129th G.A. **Date:** February 25, 2011
Status: As Passed by the Senate **Sponsor:** Sen. Hughes

Local Impact Statement Procedure Required: No

Contents: Creates the Common Sense Initiative for business rule review

State Fiscal Highlights

Common Sense Initiative Office

- The bill creates the Common Sense Initiative Office (CSIO) within the Office of the Governor. The CSIO will be staffed by approximately five to six individuals. Overall, annual operating expenses are expected to be approximately \$500,000.
- The bill creates the Small Business Advisory Council to advise the Governor, Lieutenant Governor, and CSIO on the adverse impact of rules on small businesses. The Office of the Governor could incur some administrative costs related to the Council.

Rule-making agencies

- Rule-making agencies, boards, and commissions could incur some additional administrative costs to review rules using the business impact analysis instrument. In FY 2010, 97 agencies, boards, and commissions filed 9,550 rules.

Customer service standards

- The bill requires state agencies to develop customer service standards for employees that have significant contact with the public. The costs of implementing these standards will vary by agency and depend on their scope.

Joint Committee on Agency Rule Review (JCARR)

- JCARR may have to expend additional time and effort in its review of rules affecting businesses, the cost of which would be no more than minimal on its annual GRF budget.

Department of Development

- As a result of the bill, the Entrepreneurship and Small Business Division may be able to reduce certain GRF administrative costs that are currently associated with overseeing the filing of rules affecting small businesses.

- The bill requires the Governor and Director of Development to determine if the Division should be transferred to the CSIO or if some other action should be taken to avoid duplication of services provided by the two entities.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Common Sense Initiative Office

The bill creates the Common Sense Initiative Office (CSIO) within the Office of the Governor, who is required to set up the office and have it in operation as soon as practicable after the effective date of the bill but not later than August 15, 2011. The bill specifies that the CSIO must develop a business impact analysis instrument, which will serve as the analytical tool for a new business rule review process. The bill requires the existing electronic rule-filing system to be modified to connect the CSIO into the system as soon as practicable after the effective date of the bill but not later than August 15, 2011.

According to a representative of the Governor's Office, the CSIO will be staffed with five or six individuals. The total annual cost of the CSIO is expected to be approximately \$500,000. A portion of this amount could be offset by reductions in expenditures by other agencies for functions that will be consolidated under the CSIO. Some of these functions include tasks currently assigned to ombudspersons, small business advocates, and other similar positions.

Small Business Advisory Council

The bill creates the Small Business Advisory Council within the Office of the Governor and requires the Council to advise the Governor, Lieutenant Governor, and the CSIO on the adverse impact proposed rules might have on small businesses. The Council is to consist of nine members, all representing small businesses, including five appointed by the Governor, two appointed by the Speaker of the House, and two appointed by the President of the Senate. More specifically, the bill requires the appointing authorities to take into account factors such as the size, type, and location of the businesses the members represent. The bill contains no requirements regarding compensation of the members of the Council or any administrative expenses of the Council. Presumably, any such costs would be borne by the Office of the Governor.

Agency rule-making costs

Currently, agencies must indicate whether a rule may have an adverse effect on small businesses and file such rules with the Department of Development, which publishes them in the Small Business Register. The bill repeals this requirement and instead requires rule-making agencies to evaluate all proposed rules against the CSIO's business impact analysis instrument and prepare a business impact analysis for each proposed rule that may affect businesses generally.

While the bill applies to rules that affect any business, it is possible to get a general idea of the agencies that would be most affected by looking at those that filed rules affecting small businesses under the current rule-making procedure. During FY 2010, 97 state agencies, boards, and commissions filed 9,550 rules. Of these, 41

agencies, boards, and commissions filed 4,834 rules with the Small Business Register, accounting for about half (50.6%) of all rules filed. Of the 4,834 rules filed with the Small Business Register, 2,745 (56.8%) were filed by five agencies. These are the Bureau of Workers' Compensation (BWC), Department of Job and Family Services (JFS), Department of Health (DOH), Department of Agriculture (AGR), and the Environmental Protection Agency (EPA). The table below lists the number of rules filed with the Small Business Register by each of these five agencies.

| Agencies Filing the Most Rules with the Small Business Register, FY 2010 | |
|---|--------------------|
| Agency | Rules Filed |
| Bureau of Workers' Compensation | 694 |
| Department of Job and Family Services | 681 |
| Department of Health | 498 |
| Department of Agriculture | 482 |
| Environmental Protection Agency | 390 |

In addition, several boards and commissions filed significant quantities of rules with the Small Business Register. These include the Counselor, Social Worker, and Marriage and Family Therapist Board (CSW) with 153 rules, the Racing Commission (RAC) with 152 rules, and the Respiratory Care Board (RCB) with 121 rules.

The fiscal effects of the bill on rule-making agencies will depend largely on the size of the agency and the scope and complexity of its rule-making work, including the number of employees who perform such work. In general, it may be that larger agencies with many employees working on administrative rules will more easily be able to adapt to the bill's requirements than will small boards and commissions, which only have a few, or possibly only one, full-time employee to handle a number of administrative tasks. For example, DOH currently has 123 people on its staff who devote at least part of their time to developing and filing administrative rules. These include administrative assistants, health planning administrators, sanitarian program specialists, physician administrators, and attorneys. According to DOH, the new requirements for rule evaluations and business impact analyses would likely add to the rule-making duties of current staff and result in less time spent on other work, but the Department does not anticipate requiring any additional staff to comply with the bill.

As another example of a regulatory agency with significant rule-making duties, EPA has an agency-wide Rules Coordinator and at least one Rules Coordinator for each of its seven major program divisions whose duties include the development and review of administrative rules. However, a number of other employees, including administrative, legal, technical, field, and management staff all perform certain duties as part of the rule-making process. In all, EPA estimates that the rule-making hours worked by its staff are roughly equivalent to just over 13 full-time employees with associated payroll costs of just under \$1.2 million. EPA indicated that any additional

costs to comply with the bill, including the need for additional staff, will depend on the extent of the cost-benefit analysis required by the business impact analysis instrument.

Another large agency, BWC, indicated that no additional staff would be necessary for its compliance, and anticipates incurring no additional administrative costs for adhering to the bill's requirements. Regarding smaller boards and commissions, CSW has only one full-time employee who works on rule-making duties, the Executive Director. Like EPA, CSW indicated that the amount of additional work required, and any additional administrative costs associated with that work, will depend on the final form of the business impact analysis instrument developed by CSIO.

Customer service requirements

The bill requires state agencies to develop customer service standards for employees who have a significant level of contact with the public. The bill requires such standards to reflect the job descriptions within each agency and incorporate evaluations of compliance with the standards into employee performance reviews. Currently, there are approximately 2,000 job classifications within state government. Additionally, the bill requires that an agency's compliance with its customer service standards be a factor in the consideration of the agency's biennial budget by the Office of Budget and Management and the relevant House and Senate committees. Finally, the bill permits any performance audit of a state agency to include evaluations of an agency's and employee's compliance with the customer service standards.

Overall, any costs resulting from this requirement will depend on the scope of the customer service standards adopted by agencies and the extent to which these standards are already incorporated within job descriptions for various positions. Like the costs of implementing the new rule-making requirements, these costs could vary widely from agency to agency.

Joint Committee on Agency Rule Review (JCARR)

Replacing the existing small business review process with the process described in the bill may require JCARR to expend additional time and effort in its legislative oversight of proposed new, amended, and rescinded rules submitted by certain state agencies, boards, and commissions. This is because the bill's replacement review process could increase both the number of rules required to include a business impact analysis and the complexity of the fiscal analysis. As mentioned above, in FY 2010, JCARR reviewed 9,550 rules, more than 50% of which included an analysis of their impact on small businesses. Overall, the annual cost of any additional time and effort on the part of JCARR is likely to be no more than minimal, including the possibility that the increased workload may necessitate the hiring of an additional staff person. JCARR currently has two staff (a full-time interim director and a part-time temporary administrative assistant) and is funded exclusively through GRF appropriation item 029321, Operating Expenses. Its FY 2011 appropriation totals \$435,168.

Recording rules with the Department of Development

Under current law, rules affecting small businesses must be filed with the Department of Development's Office of Small Business, which is currently constituted as the Entrepreneurship and Small Business Division. Existing statutes require the Division to maintain the Small Business Register, which is a compilation of all rules that have been filed with the Division. The bill eliminates the requirement that rules affecting small businesses be filed with the Division and instead requires such rules to be filed with the CSIO and recorded by the Division in the Small Business Register. Practically speaking, the Division's functions relating to rules affecting small businesses, including publication of the Small Business Register, would not change substantially under the bill. However, the change from the current requirement that rules be *filed with* the Division to the bill's requirement that rules be *recorded by* the Division could result in some administrative savings if it is construed to mean that the Division no longer has to maintain a system for filing administrative rules. Currently, most administrative costs related to rulemaking and the Small Business Register are borne by GRF appropriation item 195404, Small Business Development. The appropriation for this line item is approximately \$1.6 million in FY 2011.

Review of Office of Small Business

The bill requires the Governor, in consultation with the Director of Development, to determine whether the Department of Development's Office of Small Business (functionally, the Entrepreneurship and Small Business Division) should be transferred to the CSIO or, if not, determine the best way to avoid duplication of services offered to small businesses by the CSIO and the Division. The bill requires such a determination to be made within 180 days of the effective date of Am. Sub. H.B. 1 of the 129th General Assembly, the act that created the nonprofit JobsOhio economic development corporation.